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MAY 3 - 1991

Federal Communications Commission  
Office of the Secretary

May 3, 1991

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Amendment of the the Commission's Rules  
Regarding Grandfathered Short-Spaced  
Stations  
RM-7651

*Docket 96-120*

Dear Ms. Searcy:

I am transmitting herewith on behalf of Par Broadcasting Company an original and nine copies of a "Supplement to Statement In Support of Joint Petition." The document is in the nature of a supplement to Par's "Statement" filed April 4, 1991.

The purpose of the Supplement is to add to the record a discussion of the Commission's April 24, 1991 Memorandum Opinion and Order (FCC 91-104) in the matter of Educational Information Corporation and Campbell University, Inc. That decision dealt with some of the precise issues involving third-adjacent FM short spacing which were previously raised in this proceeding. That decision is thus highly relevant to the present rulemaking.

I am filing separately, at the same time herewith, a "Request to File Supplement to Statement."

Please contact me if there are any questions in connection with this matter.

Very truly yours,



Christopher C. Smallwood

CCS/md  
Enclosures

**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

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**MAY 3 - 1991**

Federal Communications Commission  
Office of the Secretary

In the Matter of

Amendment of the Commission's Rules        )  
Regarding Grandfathered Short-                )  
Spaced Stations                                 )

RM-7651

To: The Commission

**SUPPLEMENT TO STATEMENT IN SUPPORT OF JOINT PETITION**

Par Broadcasting Company, licensee of Stations KGMG AM/FM, Oceanside, California ("Par"), is submitting this document which supplements the Statement In Support of Joint Petition it filed on April 4, 1991.<sup>1</sup> The purpose of this Supplement is to bring to the Commission's attention a recent Commission decision which supports the grounds offered by Par.

1. On April 24, 1991, the Commission released a Memorandum Opinion and Order ("MOO"; FCC 91-104) regarding the applications of Educational Information Corporation (BPED-840328CA) and Campbell University, Inc. (BPED-880810MA). Both these applications involved the modification of noncommercial FM stations. Both applications sought a waiver of Section 73.509, which prohibits signal strength overlap with other reserved-band stations in accord with a chart of values. The protocol for noncommercial FM stations is thus analogous to the spacing requirements which apply in the case of commercial stations.

2. The Commission recognized that "[t]hese cases involve the Commission's current policy regarding second and third

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<sup>1</sup> A "Request to File Supplement to Statement" is filed at the same time herewith.

adjacent channel contour overlap" for NCE stations. MOO, paragraph 1.

3. The Commission concluded (MOO, paragraph 9):

[W]e wish to take this opportunity to re-examine our waiver policy in the limited area of proposed second or third adjacent channel overlap of noncommercial educational stations. Overlap of co-channel or first adjacent channel signals is a more serious matter since the interference that may occur results in the loss of service over a wide area. Second or third adjacent channel overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station. In addition, the potential for such interference to occur depends to a great extent on the quality of the receivers used within the affected area.

The Commission decided (MOO, paragraph 10) to grant waivers of second or third adjacent channel overlap in circumstances where the benefit of increased service heavily outweighs the potential for interference in very small areas.

4. In its Statement (page 5), Par argued that the Commission's 1964 Revision of FM Rules, 3 RR2d 1571, 1582-2, was correct. In that decision, the Commission permitted existing commercial FM stations to disregard short-spaced stations on second and third adjacent channels in making requests for increased facilities--in part, because of the "usually small amount of additional interference resulting". The Commission's recent MOO regarding noncommercial stations, quoted above, relies on similar reasoning. The Commission's action supports Par's position that the 1987 revision of the commercial FM rules should be undone, and that second and third adjacent grandfathered facilities should not have to be considered in the case of upgrades.

5. Par recognizes, of course, that the policy change issued in recent days applies only in the case of noncommercial stations. Yet the rules of physics do not change on the basis of an FM station's commercial or noncommercial status. The propagation characteristics are the same in either case--and, more important, so is the low likelihood of interference problems to third adjacent stations in the case of upgrades. If third adjacency is not relevant in one case, it should not be relevant in the other.

6. One of the reasons the Commission made the policy change for noncommercial stations was the "growing demand for such service". MOO, paragraph 10. Ironically enough, the fact that the commercial FM service was becoming more crowded was a reason cited in 1987 by the Commission in MM Docket No. 86-144 for eliminating the prior rule which allowed grandfathered stations to disregard second and third adjacent facilities (63 RR2d 1262, 1271)! In point of fact, there is demand for both commercial and noncommercial service in this country, as shown by the volume of applications for both kinds of station. There is a growing number of both varieties of station. And yet, as of today, this selfsame demand is relied on by the Commission (1) to disregard second and third adjacencies for noncommercial upgrades, but (2) to require strict adherence to the spacing requirements for commercial upgrades.

7. Par respectfully submits that this state of affairs is simply illogical, unreasonable and arbitrary. To disregard second and third adjacent channels in the case of upgrades is not

a wild or irresponsible proposal. The Commission itself used that approach between 1964 and 1987 for commercial stations. The Commission, in recent days, adopted that tack for noncommercial stations. Par's request that the Commission restore its policy for commercial FM stations to the pre-1987 scheme is thus entirely sensible.

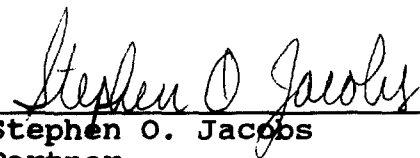
8. By its recent action regarding noncommercial stations, the Commission created an indefensible anomaly in the way it processes FM applications. The differing treatment of third adjacencies, depending solely on whether a station operates in a commercial or noncommercial mode, is not justifiable. The recent MOO, in fact, offers eloquent support for the relief requested by the petition.

For these reasons, Par urges the Commission to act expeditiously on the petition and to move ahead with a rulemaking looking towards restoring the previous processing rule for grandfathered short-spaced commercial FM stations. The Commission's recent MOO requires no less.

Respectfully submitted,

PAR BROADCASTING COMPANY

By:

  
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Stephen O. Jacobs  
Partner

Date: 5/2/91

CERTIFICATE OF SERVICE

I, Christopher C. Smallwood, certify that I have this 3rd day of May, 1991, caused to be delivered via first class mail, postage pre-paid, a copy of the foregoing "Supplement to Statement In Support of Joint Petition" to the following:

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